

Decrypting a Court Ordered Subpoena to Produce Telematics Data

With the increasing use of telematics systems it is only a matter of time before a party to litigation seeks to obtain this data pursuant to a court ordered subpoena.

What is a subpoena?

A subpoena is a court order secured by a party to litigation to request an individual or a corporation who is not a party to the litigation to either give evidence or produce documents.

As a result of the increasing prevalence of in-vehicle communication systems it is probable that a subpoena requesting telematics data will soon become quite common practice. Such requests may relate to disputes about car accidents, family law and crime generally.

What is a document?

Following the increase in electronic communications and data storage, the legal definition of 'document' has been extended to include any paper or other material on which there is:

- Writing; or
- marks, figures, symbols or perforations having a meaning for persons qualified to interpret them.

Based on this broad definition of document it is most likely that encrypted telematics data would be described as a document that is capable of being produced by way of subpoena.

Grounds for objection to production

There are a number of grounds for objecting to the production of documents requested by way of subpoena. These include:

- relevance;
- the request being too broad (e.g. 'all telematics data produced for car XYZ-123'l); and
- the request not being sufficiently clear (e.g. 'all telematics data relating to cars in which Fred Flinstone was a passenger').

"Court ordered requests for telematics data will undoubtedly increase as more and more vehicles are fitted with the technology."



Caution: Care must be exercised when producing documents. You must consider the implications of privacy and other legislation.

How should the data be produced?

If there are no reasonable grounds to object to the production of telematics data sought by a subpoena then some thought must be given to the way the data is produced to the court. In courts where Commonwealth legislation is applicable, the person required to produce the document must reproduce the information in a form capable of being understood by the court.

Whilst a similar requirement is not included in Victorian legislation it would most likely be inferred that a party required to produce such information would provide it in a form capable of being read and understood.

Can the cost of compliance be recouped?

Costs incurred by a party who is required to produce documents by way of a subpoena are recoverable. It will involve either negotiating with the party seeking the documents or an application to the relevant court for an order.

Recoverable costs may include staff time required to locate, download and decrypt the information requested.

Summary

Court ordered requests for telematics data will undoubtedly increase as more and more vehicles are fitted with the technology.

If you receive a subpoena for telematics data and you consider that the request may be too onerous or not sufficiently clear then you should consider seeking legal advice to determine if there are sufficient grounds to object to production.

It is also prudent, when developing in-vehicle communications systems and delivering telematics services to clients, to consider in a legal context the nature and extent of customer and vehicle data to be collected.

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